APPENDIX "B"

ADMINISRATIVE AMPARO IN REVIEW

District Court of Veracruz

Complaint: Miyar, Ignacio de la.

Respondent: The Governor of Veracruz.

Rights Claimed: Articles 14, 16 and 27 of the Constitution.

Act Complained Of: The declaration that the expropriation of certain lots of land belonging to the complainant was of public utility.

Application of the pertinent part of Article 27 of the Constitution, and of Articles 43 and 44 of the Law of Amparo.

(The Supreme Court revoked the decree of the District Judge which granted Federal protection, and denies this.)

SUMMARY

Act complained of: The circumstances that the act complained of is not irreparable is no ground for preclusion from amparo.

Preclusion: The court has considered that there are no other causes of preclusion from amparo than those expressly set forth in articles 43 and 44 of the respective enabling act.

Expropriation: Article 27 of the Constitution in providing that, "The laws of the Federation of the States, in their respective jurisdictions, shall determine the cases in which the occupation of private property shall be of public utility; and, in accordance with said laws, the administrative

authority shall make the corresponding declaration," has wished to grant and has granted to the legislative Power of the States, when dealing with property that is situated within their jurisdiction, a sovereign power that no other authority may invade; and, therefore, is not subject to discussion in a trial of rights, otherwise the Court would substitute its criterion for that of the authorities to whom such judgment is entrusted.

Same: If no exception has been made to the constitutionality of the law upon which the expropriation is founded, this circumstance alone is sufficient for the denial of the amparo sought against the expropriation.

Same: The appraisal of the thing expropriated and the payment of the indemnity, are acts posterior to the expropriation, which, being in the future, do not give occasion for amparo; and if, in making said indemnification and appraisal, some of the constitutional, or relative legal, precepts are infringed, then will be the opportunity to pray for amparo against such appraisal and indemnification.

Note: It is not abridged because the findings are sufficiently explicit.

The file bears number 672 of the year 1924, and mandate was pronounced on July 3, 1926.

CONCLUSIONS

First: Inasmuch as among the grievances set forth by the respondent, the preclusion of the cause action is alleged, because of the circumstances that the act complained of is not irreparable, this question should be studied first, because if resolved in the affirmative there will be no reason to go to the heart of the matter.

Second: The Supreme Court of Justice has considered that there are no other causes of preclusion than those expressly set forth in articles 43 and 44 of the Amparo Enabling Act, and since the one alleged by the Governor of Veracruz is not among them there is no room for ordering the dismissal prayed for, and the examination of the case with regard to its ground of action should proceed.

Third: The principal violation that is claimed is that of article 27 of the Constitution, because providing (as it does) that expropriations may be made only by means of indemnification and by reason of public utility, none of these requisites are contained in the declaration of the Governor of the State.

From the verified brief of the respondent it appears that the expropriation decreed is owing to the establishment of colonies in which modern and sanitary dwelling-houses shall be built, whereby rents will be made to lower and the epidemics, so frequent in the Port of Veracruz, will be made to disappear, and it is set forth in the declaration that it shall be by means of compensation in the terms expressed by the Federal Constitution.

The mere enumeration of the object pursued is sufficient to affirm that the public utility, which the complainant denies, does exist; but, moreover, article 27 of the Constitution in providing in its 7th section that, " the laws of the Federation and of the States in their respective jurisdictions, shall determine the cases in which the occupation of private property shall be of public utility; and in accordance with said laws the administrative authority shall make the declaration," has wished to concede and has conceded to the Legislative Power of the States, when dealing with property situated within their jurisdiction, a sovereign power that no other authority may

invade, and, therefore, it is not subject to discussion in a trial of rights. Otherwise, the Supreme Court would find itself obliged to find that when public utility exists in order to deny Federal protection, and when it does not exist in order to grant it, thereby substituting itself for the authorities to whom that finding is entrusted, in view of the terms of article 27 of the Constitution quoted above.

Fourth: By laying aside the thesis sustained in the foregoing finding, in this present case it must be said that the declaration made by the Constitutional Governor of Veracruz is grounded on articles 3 and 4 of Decree No. 355 of July 6, 1922, which authorizes the Executive to expropriate, by reason of public utility and by means of indemnification, the lots of land lying within the perimeter of the City of Veracruz, when the construction of houses and apartments suitable for the proletarian class shall have been commenced in a formal manner, and within the term of six months reckoning from the date of said decree, which said construction of houses is, according to article 1 of the same decree, of public utility; this law has not been objected to by the complainant; and, as has been said, it grounds the declaration of the Governor, a circumstance that in itself is sufficient for the denial of amparo.

Fifth: The violation of article 14 is made to consist in that the requisites provided by Act No. 3, of May 24, 1898, and by Section 7 of Article 27 of the Constitution were not complied with; and these legal provisions were obeyed, for, as has been said above, the establishment of colonies, such as are here being dealt with, is of public utility, and with respect to the appraisal of that which is to be taken, it is stated in the declaration of the Governor that the indemnification shall be in accordance with the provisions of the Federal Constitution,

that is, based on the amount at which the property is valued for fiscal purposes, with an addition of ten per cent. *...Furthermore, it should be observed that with respect to the appraisal of the lot and the payment of the indemnity posterior proceedings are being dealt with, for, up to this date there is nothing more than the declaration of expropriation, therefore, in truth, we are dealing with future acts that do not merit amparo, especially so since in the selfsame declaration it is set forth that the Government of the State shall indemnify the owners in the terms expressed by the Federal and Local Constitutions;* if in the proceedings relative to the indemnification and appraisal any of the precepts of the enabling act or of the Constitution should be infringed, then will be the opportune time to sue for amparo. There is no violation, therefore, of the right consecrated by article 14, and since that of article 16 is a consequence of the violation that the complainant considers had been committed against the former article, there is no room for the granting of amparo on this count, either.

Therefore it is ordered and resolved:

First: The decree pronounced by the District Judge of the State of Veracruz, in the suit for amparo to which this record refers, is hereby revoked.

Second: The Justice of the Union does not shelter nor protect Señor Ignacio de la Miyar against the acts of the Constitutional Governor of Veracruz which consist in the declaration of May 26, 1924, published in No. 29 of the Official Gazette on June 3 following, wherein the expropriation from the complainant of the lots of land numbered 15, 17, 19, 24, 26 and 28, Cuartel 9, Block 37, the first three belonging in Avenida Jimenez and the other three in Avenida Pino Suarez,

and numbered 24, 26 and 28 in Revillagigedo Street, and 165, 167, 169 and 171 in Francisco Canal, Cuartel 9, Block 38, in the City of Veracruz, was declared to be of public utility.

Third: Notify; publish; demand the revenue tax stamps that may be necessary; and together with an exemplified copy of this opinion return the proceedings to the court of their origin, and file this record in due order of time.

The Supreme Court of the Nation so decreed, by a majority of nine votes, against two by Mr. Justice Guzman Vaca and Castro. The Mr. Justices Urbina, Olea and Vicencio denied the amparo for the reasons set forth in the decree, with the exception of those expressed in the third finding. The Chief Justice and Associate Justices, who composed the full tribunal, sign together with the clerk who authenticates. ATTEST: Manuel Padilla; J. Guzman Vaca; S. Urbina; S. M. Olea; Gustavo A. Vicencio; Ricardo B. Castro; Leop. Estrada; E. Garza Perez; Franco M. Ramirez; F. Diaz Lombardo; Teofilo H. Orantes; F. Parada Gay, Clerk.

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JUDICIAL WEEKLY OF THE FEDERATION

Alphabetical Index of the Juridical Thesis Sustained by the Opinions that are Published in Full in the Volume, etc., among others:

EXPROPRIATION. Page 1245 of the Volume.)

If the constitutionality of the law upon which the expropriation is founded is not questioned, this circumstance, in itself, is sufficient for the denial of amparo prayed for against the expropriation. (Miyar, Ignacio de la. Page 23.)

SUSTAINING THE SAME THESIS:

Jul. 3—Sociedad Española de Beneficencia, versus el Gobernador del Estado de Veracruz

Jul. 3—Loustau Dionisio, versus ditto

Jul. 3—Perez Castilla Jose, versus. ditto

Jul. 3—Fernandez Juan Antonio, versus ditto

Jul. 3—Tunon Canedo Vda. de Docurro Mercedes, versus ditto

Jul. 3—Viya Hermanos, Sucs. y coags., versus ditto

Jul. 3—Aillaud Leon, versus ditto

Aug. 21—Rivas Anell Luisa, versus el Gobernador de Veracruz

EXPROPRIATION. (Page 1246 of the Volume.)

The appraisal of the thing expropriated and the payment of the indemnity are the acts posterior to the expropriation, which, being in the future give no reason for amparo; and if in making said indemnity and apraisal, any of the constitutional, or of the legal, precepts thereto, then will be the opportunity to pray for amparo against such appraisal and indemnification. (Miyar, Ignacio de la. Page 23.)

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EXPROPRIATION: (Page 1247 of the Volume.)

Article 27 of the Constitution in providing that, "The laws of the Federation and of the States, in their respective jurisdictions, shall determine the cases in which the occupation of private property shall be of public utility; and, in accordance with said laws, the administrative authority shall make the corresponding declaration," has wished to grant and has granted to the legislative Power of the States, when dealing with property that is situated within their jurisdiction, a sovereign power that no other authority may invade; and, therefore, it is not subject to discussion in a trial of rights, otherwise the Court would substitute its criterion for that of the authorities to whom such judgment is entrusted. (Miyar, Ignacio de la. Page23.)

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Jul. 3—Aillaud Leon, versus ditto

Aug. 21—Rivas Anell Luisa, versus el Gobernador de Veracruz

PRECLUSION: (Page 1257 of the Volume.)

The court has considered that there are no other causes of preclusion from amparo than those expressly set forth in articles 43 and 44 of the respective enabling act. (Miyar, Ignacio de la. Page 23.)

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Aug. 3—Lopez Carlos F., versus el Juez Primero de lo Civil de la Capital y Secretario de Guerra y Marina.

Sept. 6—Delgado Enrique, versus el Supremo Tribunal de Justicia del Estado de Michoacan.

Dec. 22—Ramirez Gregorio versus el Presidente Municipal e Inspector de Policia de Guadalajara.

Dec. 22—Valdez Juan, versus el Presidente Municipal e Inspector de Policia de Guadalajara.

Dec. 22—Herrera Rita versus el Presidente Municipal e Inspector de Policia de Guadalajara.